



House of Representatives

General Assembly

File No. 179

February Session, 2002

Substitute House Bill No. 5412

House of Representatives, March 26, 2002

The Committee on Planning and Development reported through REP. DAVIS of the 50th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING SHARED JURISDICTIONS OVER THE SITING OF TELECOMMUNICATIONS TOWERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in sections 1 to
2 5, inclusive, and sections 7 and 8 of this act, subsection (f) of section 8-
3 7d of the general statutes, as amended by this act, section 16-50i of the
4 general statutes, as amended by this act, and subsection (d) of section
5 16-50t of the general statutes, as amended by this act, "personal
6 wireless services" means personal wireless services, as defined in 47
7 USC 332(c)(7), as amended, and "telecommunications tower" means a
8 structure, free-standing or attached to a building or another structure,
9 that (1) has a height greater than its diameter, (2) rises above its
10 surroundings, and (3) is used principally to support one or more
11 antennas for (A) sending or receiving signals to or from satellites, (B)
12 receiving or sending radio frequency signals, and (C) personal wireless
13 services.

14 (b) The zoning commission of each municipality may regulate, as
15 part of the zoning regulations adopted under section 8-2 of the general
16 statutes or under any special act, the siting of telecommunications
17 towers, provided the regulations adopted pursuant to this section are
18 adopted on or before February 1, 2003, and are in compliance with 47
19 USC 332(c)(7), as amended, and any regulations adopted pursuant to
20 said 47 USC 332(c)(7). Such zoning regulations shall be in addition to
21 the zoning requirements, standards and criteria adopted pursuant to
22 section 8-2 of the general statutes. Regulations adopted pursuant to
23 this section shall be effective February 1, 2003.

24 Sec. 2. (NEW) (*Effective from passage*) (a) Notwithstanding the
25 provisions of section 16-50i of the general statutes, as amended by this
26 act, the Connecticut Siting Council shall not have jurisdiction after
27 February 1, 2003, over the siting of telecommunications towers
28 proposed to be located in a municipality if such municipality adopts
29 zoning regulations pursuant to section 1 of this act on or before
30 February 1, 2003.

31 (b) Notwithstanding the provisions of this section and section 16-50i
32 of the general statutes, as amended by this act, the Connecticut Siting
33 Council shall not have jurisdiction over the siting of
34 telecommunications towers in any municipality whose zoning
35 commission adopted regulations that specifically addressed
36 telecommunications towers pursuant to section 8-2 of the general
37 statutes on or before the effective date of this act.

38 Sec. 3. (NEW) (*Effective from passage*) (a) The chief elected official of
39 each municipality shall file, annually, with the Connecticut Siting
40 Council, electronically or otherwise, a report containing the location,
41 type and height of each existing and proposed telecommunications
42 tower in such municipality.

43 (b) On or before December 1, 2002, the Connecticut Siting Council
44 shall develop, maintain and update monthly a state-wide
45 telecommunications coverage database that includes the location, type
46 and height of all telecommunications towers in the state, as well as

47 those towers specified in subdivision (6) of subsection (a) of section 16-
48 50i of the general statutes, as amended by this act. Such database shall
49 be available for inspection by the public in hard copy and shall be
50 accessible electronically by means of the Internet or other media
51 systems available to the public. Upon request of a municipality, the
52 council shall supply any information contained in the database to the
53 municipality.

54 (c) On or before July 1, 2003, the Connecticut Siting Council shall
55 develop a plan for state-wide telecommunications coverage and
56 annually shall review and revise such plan as necessary. The plan shall
57 be consistent with the federal Telecommunications Act of 1996, as
58 amended, and with the tower sharing provisions of section 16-50aa of
59 the general statutes. The plan shall contain information on population
60 growth in the state and an analysis of existing and projected demands
61 for telecommunications coverage. On or before October 1, 2003, the
62 Connecticut Siting Council shall supply all information contained in
63 such plan concerning a municipality and its abutting or adjoining
64 municipalities to each municipality that adopts zoning regulations
65 pursuant to section 1 of this act.

66 (d) On or before April 1, 2004, each municipality that adopts zoning
67 regulations pursuant to section 1 of this act shall develop a municipal
68 telecommunications coverage plan. Such plan shall consider the
69 information provided to the municipality pursuant to subsection (c) of
70 this section, and shall include the mapping of all existing
71 telecommunications towers, radio frequency propagation modeling of
72 existing coverage, hypothetical coverage from alternative sites, and
73 identification of sensitive areas for restrictive use. The plan may
74 delineate one or more areas of the municipality within which
75 applications for the siting of telecommunications towers that meet pre-
76 established criteria shall receive accelerated approval. Such plan shall
77 be consistent with (1) 47 USC 332(c)(7), as amended, and any
78 regulations adopted pursuant to said USC 332(c)(7), (2) the Code of
79 Federal Regulations Title 47, Part 22, as amended, (3) tower sharing
80 provisions of section 16-50aa of the general statutes, and (4) the state-

81 wide telecommunications coverage plan adopted by the Connecticut
82 Siting Council pursuant to subsection (c) of this section. At the request
83 of a municipality, the Connecticut Siting Council shall provide
84 technical assistance to the municipality in preparing a plan under this
85 subsection.

86 Sec. 4. (NEW) (*Effective from passage*) (a) An applicant that proposes
87 to locate a telecommunications tower in a municipality that has
88 adopted regulations pursuant to section 1 of this act shall first submit
89 its application for such telecommunications tower to the Connecticut
90 Siting Council for an evaluation of public need for such tower.
91 Jurisdiction of the Connecticut Siting Council over such application
92 shall be limited to the issuance of an opinion of public need for such
93 tower.

94 (b) The Connecticut Siting Council shall complete an evaluation of
95 public need not more than thirty days after submission of an
96 application. A copy of the opinion shall be sent by the council by
97 certified mail, return receipt requested, to the applicant and the
98 municipality in which the proposed tower is to be located. An
99 applicant may submit an application to locate a telecommunications
100 tower to the municipality only if the Connecticut Siting Council issues
101 an opinion of public need for such telecommunications tower. If the
102 opinion of the council is that there is no public need, the applicant may
103 not submit the application to the municipality. If the opinion of the
104 Connecticut Siting Council states there is a public need for the
105 proposed telecommunications tower, such opinion shall not constitute
106 approval of such application.

107 (c) Any applicant aggrieved by an opinion of the Connecticut Siting
108 Council under this section may take an appeal in accordance with
109 section 4-183 of the general statutes to the judicial district for the
110 municipality in which the telecommunications tower is proposed to be
111 located. If the court finds for the applicant, the applicant may submit
112 an application to locate the telecommunications tower to the
113 municipality along with a copy of the decision of the court.

114 Sec. 5. (NEW) (*Effective from passage*) (a) An application for siting of a
115 telecommunications tower shall be approved by a municipality's
116 zoning commission if such application is consistent with (1) the
117 municipal telecommunications coverage plan, developed pursuant to
118 section 3 of this act, (2) the zoning regulations of the municipality
119 adopted pursuant to section 1 of this act, and (3) the provisions of 47
120 USC 332(c)(7), as amended.

121 (b) The Connecticut Siting Council shall be a party in any
122 proceeding on an application to a municipality for the siting of a
123 telecommunications tower.

124 (c) Any approval by a zoning commission of an application under
125 regulations adopted pursuant to section 1 of this act shall be rendered
126 in accordance with and subject to the provisions of chapter 124 of the
127 general statutes, except that, notwithstanding the provisions of section
128 8-8 of the general statutes, as amended, an appeal shall be limited to
129 whether (1) the municipality has a telecommunications coverage plan
130 pursuant to section 3 of this act, and (2) the decision is consistent with
131 47 USC 332(c)(7), as amended, and any regulations adopted pursuant
132 to USC 332(c)(7). The aggrieved party shall have the burden of proof in
133 any such appeal.

134 (d) Notwithstanding the provisions of this section, a municipality
135 that adopts zoning regulations pursuant to section 1 of this act but fails
136 to develop a municipal telecommunications coverage plan pursuant to
137 section 3 of this act shall have the burden of proof in any appeal.

138 Sec. 6. Section 8-7d of the general statutes is amended by adding
139 subsection (f) as follows (*Effective from passage*):

140 (NEW) (f) Notwithstanding the provisions of this section, if an
141 application involves the siting of a telecommunications tower pursuant
142 to regulations adopted under section 1 of this act, any hearing on such
143 application shall commence not later than thirty-five days after receipt
144 of such application, and shall be completed not later than thirty days
145 after such hearing commences. Any decision on such application shall

146 be rendered not later than one hundred fifty days after receipt of such
147 application. The provisions of this subsection shall not be construed to
148 apply to any extension consented to by an applicant.

149 Sec. 7. (NEW) (*Effective from passage*) The Connecticut Siting Council
150 shall develop, maintain and provide a training and education program
151 in cellular system issues and personal wireless service issues for
152 municipal officials and employees. The Connecticut Siting Council
153 shall provide such program to municipalities without fee.

154 Sec. 8. (NEW) (*Effective from passage*) The Connecticut Siting Council
155 shall be a party in any court proceeding concerning a decision by a
156 zoning commission on the siting of telecommunications towers in
157 accordance with zoning regulations adopted under section 1 of this act.

158 Sec. 9. Subsection (a) of section 16-50i of the general statutes is
159 repealed and the following is substituted in lieu thereof (*Effective from*
160 *passage*):

161 (a) "Facility" means: (1) An electric transmission line of a design
162 capacity of sixty-nine kilovolts or more, including associated
163 equipment but not including a transmission line tap, as defined in
164 subsection (e) of this section; (2) a fuel transmission facility, except a
165 gas transmission line having a design capability of less than two
166 hundred pounds per square inch gauge pressure; (3) any electric
167 generating or storage facility using any fuel, including nuclear
168 materials, including associated equipment for furnishing electricity but
169 not including an emergency generating device, as defined in
170 subsection (f) of this section or a facility (i) owned and operated by a
171 private power producer, as defined in section 16-243b, (ii) which is a
172 qualifying small power production facility or a qualifying
173 cogeneration facility under the Public Utility Regulatory Policies Act of
174 1978, as amended, or a facility determined by the council to be
175 primarily for a producer's own use, and (iii) which has, in the case of a
176 facility utilizing renewable energy sources, a generating capacity of
177 one megawatt of electricity or less and, in the case of a facility utilizing
178 cogeneration technology, a generating capacity of twenty-five

179 megawatts of electricity or less; (4) any electric substation or
180 switchyard designed to change or regulate the voltage of electricity at
181 sixty-nine kilovolts or more or to connect two or more electric circuits
182 at such voltage, which substation or switchyard may have a substantial
183 adverse environmental effect, as determined by the council established
184 under section 16-50j, and other facilities which may have a substantial
185 adverse environmental effect as the council may, by regulation,
186 prescribe; (5) such community antenna television towers and head-end
187 structures, including associated equipment, which may have a
188 substantial adverse environmental effect, as said council shall, by
189 regulation, prescribe; and (6) such telecommunication towers,
190 including associated telecommunications equipment [.] (A) owned or
191 operated by the state, a public service company or a certified
192 telecommunications provider, (B) on or before February 1, 2003, used
193 in a cellular system, as defined in the Code of Federal Regulations Title
194 47, Part 22, as amended, other than personal communication services,
195 as described in 47 USC 153(1)(c), except as provided for in section 2 of
196 this act, and (C) after February 1, 2003, used to provide personal
197 wireless service, as defined in 47 USC 332(c)(7), as amended, except
198 where the zoning commission in which such tower is to be sited has
199 adopted regulations pursuant to section 1 of this act, or used in a
200 cellular system, as defined in the Code of Federal Regulations Title 47,
201 Part 22, as amended, which may have a substantial adverse
202 environmental effect, as said council shall, by regulation, prescribe.

203 Sec. 10. Section 16-50t of the general statutes is amended by adding
204 subsection (d) as follows (*Effective from passage*):

205 (NEW) (d) The Connecticut Siting Council may adopt regulations,
206 in accordance with the provisions of chapter 54, to prescribe fees in an
207 amount sufficient to cover the reasonable cost of (1) preparation and
208 maintenance of the telecommunications coverage database and the
209 statewide telecommunications coverage plan, and provision of
210 technical assistance to municipalities, as required under section 3 of
211 this act, (2) evaluation of public need for applications and activities in
212 any court proceedings under section 4 of this act, (3) participation as a

213 party in local zoning matters under section 5 of this act, (4) provision
214 of training and education services under section 7 of this act, and (5)
215 activities in court proceedings under section 8 of this act.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>from passage</i>
Sec. 5	<i>from passage</i>
Sec. 6	<i>from passage</i>
Sec. 7	<i>from passage</i>
Sec. 8	<i>from passage</i>
Sec. 9	<i>from passage</i>
Sec. 10	<i>from passage</i>

Statement of Legislative Commissioners:

In subsection (a) of section 1 and subsection (c) of section 5, changes were made in subdivision designators for consistency with customary statutory usage.

PD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Savings	Siting Council, CT	Potential	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Effect	Municipalities	Current FY \$	FY 03 \$	FY 04 \$
Cost	Various Municipalities	Potential	Potential	Potential

Explanation

The bill changes the way telecommunications towers are sited by giving the municipalities jurisdiction over a wide range of towers if the municipalities' current zoning ordinances permit, or if the municipalities adopt such provisions before the bill goes into effect. This will result in a workload shift between the municipalities and the Connecticut Siting Council (CSC). The extent to which municipalities will choose to be involved in the tower siting process is unknown at this time.

OLR Bill Analysis

sHB 5412

AN ACT CONCERNING SHARED JURISDICTIONS OVER THE SITING OF TELECOMMUNICATIONS TOWERS**SUMMARY:**

This bill moves most of the siting authority for telecommunications towers from the Connecticut Siting Council to municipalities, provided municipalities take certain steps. The bill affects towers used to provide personal communications services (PCS) and cellular service, and other towers currently regulated by the council.

It gives municipal zoning commissions, rather than the council, jurisdiction over a wide range of towers if their current zoning regulations specifically address towers or they adopt such provisions before the bill goes into effect, which is upon passage.

The bill gives municipal zoning commissions that have not adopted such regulations by the bill's effective date jurisdiction over PCS towers until February 1, 2003. Starting on this date, it allows these commissions to assume jurisdiction over all towers by adopting a regulation that complies with relevant federal law. In doing so, it places several requirements on these municipalities that it does not place on those that adopt tower-zoning regulations before the bill goes into effect. These requirements include adopting a telecommunications coverage plan and having an expedited tower approval process.

Tower developers in towns that adopt tower-zoning regulations after the bill takes effect also must obtain an opinion from the council that the tower is needed before they can apply for local zoning commission approval. Only the applicant can appeal the council's decision. If the council determines that the tower is needed or the court reverses its denial, the commission must hear the application on an expedited basis. It must approve the application if the tower complies with the ordinance, the plan, and relevant federal law. The bill allows an appeal of the commission's decision only on a limited range of issues. If a municipality does not adopt a regulation by February 1, 2003, it loses jurisdiction over the PCS towers as of that date and the council retains

its jurisdiction over the other towers.

The bill requires the council to develop a statewide tower database and telecommunications coverage plan and to provide training and education to local officials. It makes the council a party in any appeal of a zoning commission's decision. It allows the council to adopt regulations on fees it may charge to cover its costs of implementing the bill.

The bill also requires chief elected municipal officials to report annually to the council, electronically or otherwise, the location, type, and height of each existing and proposed tower in the municipality.

EFFECTIVE DATE: Upon passage

JURISDICTION OVER TOWERS

Under current law, the Connecticut Siting Council has jurisdiction over cellular towers. Historically, it interpreted the term cellular to exclude PCS, a related technology. As a result, zoning commissions and other local land agencies exercised jurisdiction over their siting. Two years ago, a federal district court held that the law's definition of cellular includes PCS, thereby transferring jurisdiction to the council. The attorney general appealed the decision and in December the U.S. Court of Appeals affirmed the district court ruling that cellular includes PCS (*Sprint Spectrum LP v. Connecticut Siting Council*, 274 F.3d 674 (2d Cir. 2001)).

The state Supreme Court is considering two other cases in which Westport is seeking a ruling that PCS towers are not covered by the definition of cellular telecommunications. The Supreme Court is not bound by federal court rulings regarding the interpretation of state laws that have not been preempted by federal law.

Municipalities that Adopt Ordinances Before the Bill's Effective Date

The bill gives a municipality jurisdiction over a wide range of towers if it has adopted a zoning regulation that specifically addresses telecommunications towers before this bill goes into effect. (While the bill deals explicitly with zoning commissions only, it appears to give other local agencies such as wetland agencies jurisdiction as well by

taking the towers out of the council's jurisdiction.)

Under the bill, a tower is a structure that is free standing or attached to a building or another structure and must be taller than its diameter and rise above its surroundings. It must be used primarily to support one or more antennas used for (1) sending or receiving signals to or from satellites, (2) receiving or sending radio frequency signals, or (3) wireless services such as cellular and PCS. It appears that this definition covers towers that under current law are regulated by municipalities (such as TV and commercial and amateur radio) and those regulated by the council (such as cellular towers and towers owned by state agencies).

Municipalities that Adopt an Ordinance By February 1, 2003

The bill allows a municipality to take jurisdiction over the broad range of towers described above when its planning commission adopts a tower regulation between the bill's effective date and February 1, 2003. The regulation must go into effect on February 1, 2003 and must comply with relevant federal law (47 USC § 332(c)(7)) and implementing regulations. Among other things, the federal law bars governments from "zoning out" wireless telecommunications facilities and from discriminating unreasonably among wireless services providers. The regulation must be in addition to the municipality's existing requirements, standards, and criteria. If the municipality adopts such a regulation, the council's jurisdiction over towers ends after February 1, 2003.

The bill subjects municipalities that assume jurisdiction over towers by adopting a regulation after its effective date to several requirements that do not appear to apply to those that adopt regulations earlier. The bill consistently applies several provisions to municipalities that have adopted a regulation under section 1 (i.e., after the bill's effective date). Section 2 gives municipalities that adopted a regulation before the bill's effective date jurisdiction over towers.

By April 1, 2004, each municipal zoning commission that adopts a regulation after the bill's effective date must develop a municipal telecommunications coverage plan, which must consider the information in the statewide plan discussed below. The town plan must include maps of all existing telecommunications towers, modeling of the coverage currently provided at various radio

frequencies, and hypothetical coverage from alternative sites. It must be consistent with relevant federal law and regulations, the state tower sharing policy, and the statewide plan. The municipal plan must identify sensitive areas for restricted use and may designate one or more areas within which towers that meet specified criteria would receive accelerated approval. The council must provide the municipality with technical assistance, upon request, in developing its plan.

A tower applicant that proposes to locate a tower in a municipality subject to these provisions must first apply to the council for a determination of need. The council's jurisdiction is limited to this issue. The council must complete its determination within 30 days after the application is submitted. It must send the applicant and municipality a copy of its opinion by certified mail, return receipt requested. If it determines that there is no need, the developer cannot apply to the municipality, but it can appeal to the Superior Court for the judicial district where the tower is proposed to be located. If the court finds for the applicant, it can apply to the municipality for approval. (It must include the court's decision.) If the council determines that there is a need, the developer can apply to the municipality, but the council's opinion is not an approval of the application.

The municipality must hear the application on an expedited schedule. Normally, under CGS § 8-7d, a zoning commission must begin its hearing within 65 days of receiving an application and complete the hearing within 35 days of its start. The bill reduces these periods to 35 and 30 days, respectively. Normally, a commission must issue its decision within 65 days after the hearing is completed, i.e., no more than 165 days from the date of application. The bill instead requires the commission to decide within 150 days of receiving the application, regardless of how long the hearing runs. The bill allows the applicant to consent to an extension of any length. Current law allows an applicant to agree to an extension up to the period specified by law.

Under the bill, the municipality must approve the tower application if it is consistent with the (1) federal law, (2) zoning regulations, and (3) municipal plan. It appears that under both the bill and federal law, the first condition applies to all ordinances, regardless of when they are adopted.

Appeals of the commission's decision go to the zoning board of

appeals (ZBA), as is normally the case under zoning law. But the appeal is limited to whether (1) the municipality had a telecommunications plan and (2) the commission's decision is consistent with the federal law. The aggrieved party has the burden of proof, unless the municipality failed to adopt the plan required by the bill, in which case the municipality bears the burden of proof. It is not clear whether these provisions apply to subsequent appeals of the ZBA's decision to the courts.

The bill makes the council a party in any court proceeding on the commission's decision. As a party, it can appeal the decision, among other things.

COUNCIL RESPONSIBILITIES AND POWERS

The bill requires the council, by December 1, 2002, develop a statewide telecommunications coverage database, which must include the location, type, and height of all telecommunications towers in the state (including the cellular towers currently regulated by the council). The council must maintain the database and update it monthly. The database must be available for public inspection in hard copy and be available electronically by Internet or other means. The council must supply information contained in the database to a municipality upon request.

By July 1, 2003, the council must develop a plan for statewide coverage, which must be consistent with the 1996 federal Telecommunications Act and the state's tower sharing policy. The plan must include information on the state's population growth and analyze existing and projected demands for telecommunications coverage. By October 1, 2003, the council must supply to a municipality that adopts an ordinance after the bill's effective date all of the information in the plan about that municipality and abutting municipalities. The council must review the plan annually and revise it as necessary.

The bill requires the council to develop and implement a free training and education program on cellular and other personal wireless system issues for municipal officials and employees.

The bill allows the council to adopt regulations specifying fees to cover its reasonable costs of implementing the bill. The fees can cover council

costs to:

1. prepare and maintain the database and statewide plan;
2. provide technical assistance, training, and education to municipalities;
3. evaluate the need for towers and respond to appeals of this determination; and
4. participate in local zoning proceedings and in subsequent court appeals.

The bill does not specify whether the council may impose fees only on the tower developers subject to its determination of need or on others as well.

BACKGROUND

Related Court Cases

In December, the U.S. Court of Appeals affirmed the district court ruling giving the council exclusive jurisdiction over cellular towers and related equipment (*Sprint Spectrum LP v. Connecticut Siting Council*, 274 F. 3d 674 (2d Cir. 2001)). Currently, the state Supreme Court is considering two cases in which the town of Westport asserts that (1) PCS towers are not covered by the definition of cellular telecommunications and (2) in cases where the tower has both PCS and cellular antennas, both Siting Council and local approvals are required (*Town of Westport v. Connecticut Siting Council* (docket SC 16600) and *Cellco Partnership v. Westport Zoning Board of Appeals* (docket SC 16601)). The court is not bound by the U.S. Court of Appeals decision, but uses its decisions as persuasive authority.

Related Bills

HB 5471, "An Act Concerning Municipal Jurisdiction Over Telecommunications Towers For Personal Communications Services," reported favorably by the Program Review and Investigations Committee, gives zoning commissions jurisdiction over PCS towers and related equipment and implicitly removes PCS towers from the council's jurisdiction.

HB 5472, "An Act Concerning Siting Council Decisions and a Telecommunications Towers Database," reported favorably by the

Program Review and Investigations Committee, requires the council to (1) include more information in its decisions on towers and (2) maintain a telecommunications tower database.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Report

Yea 17 Nay 0